



March 31, 1999

Mr. B. J. Smith
City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR99-0884

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123720.

The City of Mesquite (the "city") received three requests for information from the same requestor for 1) "A copy of any and all audio and video tapes arising out of an interaction with Robert James Fox by the City of Mesquite Police Department on or about October 21, 22, and 23, 1998 for an alleged traffic offense"; 2) "Arrest and/or incident report of James Fox by the City of Mesquite Police Department on or about January 5, 1999 and January 6, 1999 for an alleged traffic offense"; and 3) "Arrest and/or incident report of Robert James Fox by the City of Mesquite Police Department on or about January 19, 1999 for an alleged traffic offense" including "a copy of the arrest warrant and affidavit in support thereof, a copy of the commitment papers, and the names and badge numbers of the officers involved, especially the three officers that assisted Captain Wall". You seek to withhold the requested information under sections 552.103, 552.108, and 552.119 of the Government Code.

Section 552.103(a) excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

Here, you have provided us with a copy of a notice of claim filed with the city by the requestor, which you represent as in compliance with the notice requirements of the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code. We believe that you have thus demonstrated that the city may reasonably anticipate litigation. *See* Open Records Decision No. 638 (1996). Having examined your arguments, the notice of claim, and the information at issue, we conclude that the information relates to the anticipated litigation. Therefore, you may generally withhold the information under section 552.103(a) at this time.

We assume, however, that none of the information in the records at issue has previously been made available to the opposing party in the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the opposing party has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). Similarly, section 552.103(a) does not authorize a governmental body to withhold materials which have already been made available to the public. Open Records Decision No. 436 (1986). The applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

Also, section 552.103 does not, without a special showing which you have not made here, apply to "basic information" about an arrested person, an arrest, or a crime. Open Records Decision No. 597 (1991). You must therefore release "basic information from the requested records in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing what is "basic information").

We note that your section 552.108 claim would not extend to “basic information” either. *See* Gov’t Code §552.108(c). Also, the information you claimed to be protected by section 552.119 -- photographs of peace officers -- is not “basic information” and is included in the information that we have permitted you to withhold under section 552.103(a). Therefore, we need not further address your other claims at this time.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

Open Records Division

Ref.: ID# 123720

Encl. Submitted documents

cc: Mr. Stephen James
397 Dal-Rich Village, #299
Richardson, Texas 75080
(w/o enclosures)